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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/524,987	02/21/2006	Dietmar Rakutt	05-180	3235
34704 7590 05/29/2009 BACHMAN & LAPOINTE, P.C. 900 CHAPEL STREET SUITE 1201 NEW HAVEN, CT 06510				
EXAMINER				
THOMAS, ALEXANDER S				
ART UNIT		PAPER NUMBER		
1794				
MAIL DATE		DELIVERY MODE		
05/29/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/524,987

Applicant(s)

RAKUTT ET AL.

Examiner

Alexander Thomas

Art Unit

1794

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 April 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 22-31 and 40-42 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 22-31 and 40-42 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-8508)
Paper No(s)/Mail Date 3/31/09
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 4/30/09 has been entered.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 22, 24-30 and 42 are rejected under 35 U.S.C. 102(b) as being anticipated by Tusim et al 6,213,540. The reference discloses a structural element comprising a plurality of stretched (column 7, lines 47-54) closed-cell thermoplastic foam (column 5, lines 31-35) segments 54 arranged next to each other, said segments welded together at abutting faces forming weld seams 52 that are pore-free (column 8, lines 27-52) and that intersect to form a network of seams (Figure 6).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. Claims 23 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tusim et al 6,213,540. The reference discloses the invention substantially as claimed; see the above rejection under 35 USC 102. However, it does not disclose the particular claimed foam material. It would have been obvious to one of ordinary skill in the art to use any well-known thermoplastic material, such as PET or SAN, as the foam material in the reference's product since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. Concerning claim 31, the reference discloses that its foam products may be formed into any desired shape depending on the end use (column 11, lines 37-43). Therefore, it would have been obvious to one of ordinary skill in the art to form the composite of Figure 6 in the reference in a flat sheet-shape since a change in shape is generally recognized as being within the level of ordinary skill in the art.

6. Claim 40 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tusim et al 6,213,540 in view of Noel 4,755,408. The primary reference discloses the invention substantially as claimed; see the above rejection under 35 USC 102. The primary reference also discloses that its foam products may be formed into any desired shape depending on the end use (column 11, lines 37-43). Noel discloses a similar extruded foam structural element that may be cut to form panel-shaped products of any desired thickness; see Figure 48, column 6, lines 44-49 and column 10, lines 56-68. It would

have been obvious to one of ordinary skill in the art to cut off a short section of the extruded composite of the primary reference in view of the teachings of the secondary reference in order to form a panel shaped product if the end use necessitated a panel-shaped structure.

7. Claim 41 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tusim et al 6,213,540 in view of either DE 19715529 or Delorme 3,841,958. The primary reference discloses the invention substantially as claimed; see the above rejection under 35 USC 102. However, the primary reference does not teach offsetting the joints between the foam segments. The secondary references each disclose offsetting the joint lines in foam composites; see Figures 3-6 of DE 19715529, and Figures 15-16 and column 7, lines 40-50 of Delorme. It would have been obvious to one of ordinary skill in the art to offset the joint lines in the product of the primary reference in view of the teachings in the secondary references to provide a stronger panel more resistant to non-perpendicular or horizontal loads.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alexander Thomas whose telephone number is 571-272-1502. The examiner can normally be reached on 6:30-4:00 M-THUR.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Sample can be reached on 571-272-1376. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Alexander Thomas/
Primary Examiner
Art Unit 1794